



DEPARTMENT OF TRANSPORTATION

[4910-9X]

Office of the Secretary of Transportation

Letters of Interest for Credit Assistance under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program

AGENCIES: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (the DOT), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD).

ACTION: Notice of funding availability and request for comments.

SUMMARY: Pursuant to the recently enacted Fixing America's Surface Transportation Act (the FAST Act), the DOT announces the availability of funding authorized in the amount of \$1.435 billion (\$275 million in Fiscal Year (FY) 2016 funds, \$275 million in FY 2017 funds, \$285 million in FY 2018 funds, \$300 million in FY 2019 funds, and \$300 million in FY 2020 funds (and any funds that may be available from prior fiscal years)) to provide TIFIA credit assistance for eligible projects. The FY 2016-2020 authorized funds are subject to an annual obligation limitation that may be established in appropriations law. The amount of TIFIA funding authority available in a given year may be less than the amount authorized for that fiscal year. Under TIFIA, the DOT provides secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. Projects must meet statutorily specified eligibility criteria to receive credit assistance.

This notice outlines the process that project sponsors must follow in seeking TIFIA credit assistance. The DOT is publishing this notice to give project sponsors an

opportunity to submit Letters of Interest for the newly authorized funding as soon as possible. However, in addition to authorizing funding for TIFIA credit assistance, the FAST Act made a number of changes to the TIFIA program's structure, including the terms and conditions pursuant to which the DOT can provide TIFIA credit assistance. This notice outlines certain changes made by the FAST Act and invites interested parties to submit comments about the DOT's implementation of the FAST Act and the DOT's guidance for awarding TIFIA credit assistance. Unless otherwise noted, statutory section references in this notice are to sections of title 23 of the U.S. Code, as amended by the FAST Act, which took effect as of October 1, 2015.

Letter of Interest Submission: All project sponsors wishing to apply for TIFIA credit assistance must first submit a Letter of Interest, as more fully described in this notice of funding availability. Only after a project sponsor has submitted a Letter of Interest and demonstrated the satisfaction of all statutory eligibility requirements will the project sponsor be invited to submit an application. Letters of Interest will be received on a rolling basis using the form on the TIFIA website: <https://www.transportation.gov/tifia/applications>.

ADDRESSES: Addresses for Letters of Interest: Submit all Letters of Interest to the DOT via e-mail at: TIFIACredit@dot.gov. Submitters should receive a confirmation e-mail, but are advised to request a return receipt to confirm transmission. Only Letters of Interest received via e-mail, as provided above, shall be deemed properly filed.

Addresses for Comments: You must include the agency name (Office of the Secretary of Transportation) and the docket number **DOT-OST-2016-0032** with your comments. To ensure your comments are not entered into the docket more than once, please submit

comments, identified by the docket number **DOT-OST-2016-0032**, by only one of the following methods:

Website: The U.S. Government electronic docket site is *www.regulations.gov*. Go to this website and follow the instructions for submitting comments into docket number **DOT-OST-2016-0032**;

Fax: Telefax comments to **DOT-OST-2016-0032**;

Mail: Mail your comments to U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Docket Operations, M-30, Room W12-140, Washington, DC 20590; or

Hand Delivery: Bring your comments to the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions for Submitting Comments: You must include the agency name (Office of the Secretary of Transportation) and Docket number **DOT-OST-2016-0032** for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. For confirmation that the Office of the Secretary of Transportation has received your comments you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov*, including any personal information provided, and will be available to Internet users. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact Duane Callender via e-mail at TIFIACredit@dot.gov or via telephone at (202)366-1059. A TDD is available at (202)366-7687. Substantial information, including the TIFIA Program Guide and application materials, can be obtained from the TIFIA website: <https://www.transportation.gov/tifia>. The TIFIA Program Guide is being updated to reflect changes to the program under the FAST Act.

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I. Background

The Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 241 established the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the DOT to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144), which made a number of amendments to TIFIA including lowering the estimated project cost thresholds and expanding eligibility for TIFIA credit assistance. In 2012, Congress enacted the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141). MAP-21 provided for substantial changes in the TIFIA credit program, including expanding eligibility and authorized uses of TIFIA credit assistance and modifying the selection process. On December 4, 2015, the President signed the FAST Act into law (Pub. L. 114-94), which provided for substantial changes in the TIFIA credit program under Section 2001 of the FAST Act. This notice of funding availability addresses certain changes to the TIFIA credit program made by the FAST Act and solicits Letters of Interest for the funding made available under that law.

The TIFIA program is a departmental program and final approval of credit assistance is reserved for the Secretary. In addition, the FAST Act mandates the creation of a National Surface Transportation and Innovative Finance Bureau (Bureau), which will be responsible for administering the TIFIA application process. The Bureau will also provide assistance and communicate best practices for financing and funding opportunities to sponsors of projects eligible for TIFIA credit assistance, as well as other forms of DOT credit assistance.

II. Program Funding

The FAST Act authorizes \$1.435 billion in TIFIA funding authority over five fiscal years (\$275 million in FY 2016 funds, \$275 million in FY 2017 funds, \$285 million in FY 2018 funds, \$300 million in FY 2019 funds, and \$300 million in FY 2020 funds) from the Highway Trust Fund to pay the subsidy cost of credit assistance. Additional funds may also be available from funding authority carried over from previous fiscal years. Any funding authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years. The TIFIA funding authority is subject to an annual obligation limitation that may be established in appropriations law. Like all funds subject to the annual Federal-aid obligation ceiling, the amount of TIFIA funding authority available in a given year may be less than the amount authorized for that fiscal year. Historically, each dollar of TIFIA funding authority has allowed the DOT to provide approximately \$10 in credit assistance. In recent years, the DOT has been able to leverage TIFIA funds to support closer to \$14 in credit assistance. Given statutory changes in the TIFIA credit program under the FAST Act, and the need to calculate credit subsidies on a project-by-project basis, actual

lending capacity will vary. In addition to direct funding for the TIFIA program, the FAST Act permits the use of certain Federal-aid funds to cover the subsidy and administrative costs associated with TIFIA credit assistance. Under the FAST Act, Surface Transportation Block Grant Program funds (23 U.S.C. 133), National Highway Performance Program funds (23 U.S.C. 119), and Nationally Significant Freight and Highway Projects Program grant funds (23 U.S.C. 117) may be used by eligible recipients to cover the subsidy and administrative costs of TIFIA credit assistance (including the fees and expenses of the DOT's outside advisors hired in connection with the evaluation and negotiation of terms of TIFIA credit assistance for a project). As in previous years, Transportation Investment Generating Economic Recovery (TIGER) grant funds may also be used to cover these costs. (See Part VI below for more information regarding TIFIA administrative costs).

To ensure maximum leverage of TIFIA program funds and efficient allocation of TIFIA resources, the DOT encourages eligible recipients to consider use of the three sources of Federal-aid funds listed above to cover the subsidy and administrative costs of TIFIA credit assistance, as authorized in the FAST Act. Project sponsors will be asked to indicate in their Letters of Interest whether other Federal-aid funds are available to cover the subsidy and administrative costs of their requested TIFIA credit assistance, and provide an explanation therefor (for example, that the sponsor is not a State recipient of Federal-aid funds).

III. Eligible Projects

The DOT has provided TIFIA credit assistance across a variety of transportation modes and the surface transportation components of multifaceted development and

redevelopment projects. Generally, eligible projects include highway projects, passenger rail projects, transit and intermodal projects, private rail facilities providing public benefit to highway users, surface transportation infrastructure modifications within a port terminal, intelligent transportation systems, surface transportation projects eligible for Federal assistance under title 23 or title 49 of the U.S. Code, international bridges and tunnels, intercity passenger bus or rail facilities and vehicles, and related improvement projects grouped together, so long as the individual components are eligible and the related projects are secured by a common pledge.

The FAST Act expands eligibility to include transit-oriented development and the capitalization of a rural projects fund within a State infrastructure bank (SIB). In addition, the FAST Act refines the scope of eligibility for project refinancing.

A. Transit-Oriented Development

Under the FAST Act, a project to improve or construct public infrastructure that is located within walking distance of, and accessible to, a fixed guideway transit facility, passenger rail station, intercity bus station, or intermodal facility, including a transportation, public utility, or capital project described in 49 U.S.C. 5302(3)(G)(v), and related infrastructure, is now eligible to receive TIFIA credit assistance (see 23 U.S.C. 601(a)(12)(E)). Activities to improve or construct such infrastructure are commonly known as “transit-oriented development” (or TOD). See Part V below for more information regarding general TIFIA eligibility requirements (such as minimum project costs).

B. State Infrastructure Banks and TIFIA

In addition to certain accommodations for rural infrastructure projects, such as a reduced interest rate on TIFIA credit assistance and lower minimum eligible project cost thresholds (see Part IV below for more on rural infrastructure projects and interest rate calculation; see Part V below for more information on TIFIA eligibility requirements), the FAST Act enables SIBs to receive TIFIA secured loans to be used to capitalize a rural projects fund within the SIB (see 23 U.S.C. 601(a)(12)(F)).

A TIFIA loan to capitalize a rural projects fund must be secured by a dedicated revenue source(s) available to the SIB (see 23 U.S.C. 602(a)(6) and 603(b)(3)(A)(V) for a description of the requirements for a dedicated revenue source for a TIFIA loan to a SIB). The TIFIA loan to the SIB may not be less than \$10 million or more than \$100 million. SIBs will be eligible to receive the reduced interest rate (equal to one-half of the Treasury Rate) to the extent of available funds for such reduced-rate loans. (See Part IV below for additional discussion regarding the set-aside for rural infrastructure projects and rural projects fund capitalizations). Notably, the SIB, rather than specific subsidiary projects, would be responsible for all stages and requirements of the standard TIFIA application process, beginning with submission of a Letter of Interest that will be reviewed for factors including eligibility and creditworthiness, including review from an independent financial advisor. (See Part VI below for additional discussion regarding the application process; additional information regarding the application process can also be found in the TIFIA Program Guide.) The SIB would then use the TIFIA loan proceeds to make direct loans for rural infrastructure projects out of its rural projects fund. (See Part IV below for more discussion regarding, and the definition of, rural infrastructure projects.) The SIB, rather than the DOT, would review the specific projects. The FAST Act also requires

that the SIB use all of its loan commitment within two years after obligation of the loan unless extended by the DOT.

Prior to the FAST Act, SIBs were permitted to use Federal-aid funds to capitalize a highway, a transit, and a rail account within the SIB. The funds in those accounts could then be used to make loans to eligible highway, transit, and rail projects, respectively. As discussed above, the FAST Act permits SIBs to establish a fourth account (a rural projects fund) that can be capitalized by a TIFIA loan to a SIB. The SIB must use the funds in its rural projects fund to make loans for projects meeting the rural infrastructure project definition. (See Part IV below for the definition of rural infrastructure project.) A SIB loan for a rural infrastructure project must comply with certain specific requirements, including: (i) the SIB loan cannot exceed 80 percent of the cost of carrying out the project; (ii) the SIB loan must bear interest at or below the interest rate on the TIFIA loan used to capitalize the rural projects fund; (iii) repayment of the SIB loan must commence not later than 5 years after completion of the project; and (iv) the term of the SIB loan cannot exceed 30 years after the date of the first payment on the loan.¹ For more information regarding SIBs, including the specific requirements for SIB loans to rural infrastructure projects, see 23 U.S.C. 610.

The DOT recognizes that this is a new category of activity and will provide further guidance on the formal application and credit evaluation processes, informed by feedback from stakeholders through this NOFA. The DOT intends for such guidance to be included in the forthcoming TIFIA Program Guide update which will be published in the near future to inform the preparation of formal SIB applications and credit

¹ Note that certain of these requirements differ for loans made from the SIB's other accounts (i.e., the highway, transit, or rail account). For a list of the specific requirements applicable to SIB loans, see 23 U.S.C. 610.

evaluations. In the interim, the DOT will conduct targeted outreach and provide technical assistance to potential applicants in preparing SIB Letters of Interest.

C. Refinancing

TIFIA loan proceeds can be used to refinance existing obligations in three scenarios: (i) to refinance Federal credit instruments for rural infrastructure projects, (ii) to refinance long-term project obligations of Federal credit instruments if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that would otherwise be eligible, and (iii) to refinance interim construction financing for eligible projects. The FAST Act clarified the parameters of interim construction financing: the maturity of such existing interim financing must not be later than one year after substantial completion of the project and the refinancing must occur prior to one year after substantial completion of the project (see 23 U.S.C. 603(a)(2)).

D. Availability Payments

The FAST Act codifies the DOT practice of allowing payments made by a State pursuant to a long-term concession agreement, such as availability payments, for a highway project being delivered as a public-private partnership to be eligible for Federal-aid reimbursement where the State has advance construction authorization (see Pub. L. No. 114-94, section 2002). It is important to note, however, that TIFIA credit assistance cannot be repaid using Federal-aid funds. As such, where TIFIA credit assistance is provided directly to a concessionaire receiving availability payments and the State sponsor intends to seek Federal-aid reimbursement for such payments, the DOT will require the State sponsor to demonstrate the availability of non-Federal funds sufficient to cover TIFIA debt service.

IV. Types of Credit Assistance

The DOT may provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees (see 23 U.S.C. 603(a)(1), 603(e)(1), and 604(a)(1)). These types of credit assistance are defined in Section 601. The TIFIA credit facility, which must have a senior or senior-parity lien in the event of bankruptcy, liquidation or insolvency, can be subordinate as to cash flows absent such an event. The TIFIA loan may be fully subordinated, even in the event of a bankruptcy, liquidation or insolvency, if the borrower is a public agency that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture so long as (i) the TIFIA loan is rated A-category or higher, (ii) the revenue pledge is not affected by project performance, such as a tax-backed revenue or system pledge, and (iii) TIFIA is financing 33 percent or less of the eligible project costs. However, in such cases, the maximum credit subsidy to

be paid by the Government may not be more than 10 percent of the principal amount of the loan; the obligor is responsible for paying any remaining subsidy cost.

The maximum amount for a TIFIA secured loan for a project is 49 percent² of the project's eligible project costs. For a TIFIA line of credit, the maximum amount remains at 33 percent of the project's eligible project costs. Project sponsors may not include any costs associated with reimbursing TIFIA for the fees of its outside advisors, or costs related to the application process (such as charges associated with obtaining the required preliminary rating opinion letter referenced in Part VI), among eligible project costs for the purpose of calculating the maximum 49 or 33 percent credit amount. Project sponsors should identify in each Letter of Interest the level of funding (including the percentage of eligible project costs) being requested, as specified in Part VI.

Section 603(b)(4) provides that the interest rate on a secured loan may not be less than the yield on U.S. Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement (for lines of credit, Section 604(b)(4) provides that the interest rate may not be lower than the 30-year rate for U.S. Treasury securities, as of the date of execution of the line of credit agreement) (the Treasury Rate). In general, TIFIA currently charges interest rates equal to the Treasury Rate on the date of execution of the TIFIA credit instrument.

As with MAP-21, the FAST Act allows for up to 10 percent of the TIFIA program's annual funding authority to be provided to rural infrastructure projects or to capitalize rural projects funds within SIBs at a reduced interest rate of one-half of the Treasury Rate. However, the FAST Act modified the definition of rural infrastructure projects set forth in MAP-21; under the FAST Act, rural infrastructure projects are

² Limited to 33 percent where the nonsubordination requirement is waived, as described above.

defined as surface transportation infrastructure projects located in an area that is outside of an urbanized area with a population greater than 150,000 individuals, as determined by the Bureau of the Census (see 23 U.S.C. 601(a)(15)). The reduced interest rate applies only to rural projects and SIB capitalizations funded with the up-to 10 percent of funding authority set-aside. Once the set-aside has been fully committed, any loans for rural projects or SIB capitalization would accrue interest at the Treasury Rate.

The FAST Act also clarified the requirements for a master credit agreement. Under MAP-21, the DOT was able to provide a contingent commitment of future TIFIA credit assistance in the form of a master credit agreement, subject to the availability of future funding and the satisfaction of all the conditions for the provision of credit assistance under the TIFIA program. The FAST Act clarified that a master credit agreement can be used either for a program of projects secured by a common revenue pledge or for a single project where adequate funding is not available to fund TIFIA credit assistance in the fiscal year in which the project sponsor's application for credit assistance is approved (see 23 U.S.C. 602(b)(2)). In addition, the FAST Act clarified that the common revenue source pledged in support of the master credit agreement must receive an investment grade rating at the time the TIFIA credit assistance is obligated (see 23 U.S.C. 601(a)(10)).

V. Eligibility Requirements

A project must meet all of the eligibility criteria set forth in Section 602(a) to receive TIFIA credit assistance.

A. Reduced Minimum Cost Threshold for Small Projects

For instance, projects seeking TIFIA assistance must meet certain statutory threshold requirements for project costs (see 23 U.S.C. 602(a)(5)). Generally, the minimum size for TIFIA projects is at least \$50 million in total eligible project costs (23 U.S.C. 602(a)(5)(A)(i)); however, the minimum size is lower for certain types of projects. The FAST Act established a threshold of \$10 million in eligible project costs for both TOD projects (23 U.S.C. 602(a)(5)(B)(ii)) and for local projects (eligible projects the sponsor of which is a local government or instrumentality, which are located on a facility owned by a local government or the development of which a local government is substantially involved (23 U.S.C. 602(a)(5)(B)(iv))). The minimum size for TIFIA projects principally involving the installation of an intelligent transportation system is \$15 million (23 U.S.C. 602(a)(5)(B)(i)). The FAST Act lowered the minimum cost threshold for rural infrastructure projects from \$25 million to \$10 million in eligible project costs (23 U.S.C. 602(a)(5)(B)(iii)); however, the FAST Act added a maximum size for rural infrastructure projects of \$100 million in eligible project costs (23 U.S.C. 602(a)(5)(B)(iii)). As applied to the capitalization of a rural projects fund in a SIB, the FAST Act limits the size of a TIFIA loan to a SIB to between \$10 and \$100 million (23 U.S.C. 602(a)(5)(B)(iii)).

B. Ratings Requirements

Prior to execution of a TIFIA credit instrument, the senior debt obligations for each project receiving TIFIA credit assistance must obtain investment grade ratings from at least two nationally recognized rating agencies, and the TIFIA debt obligations must obtain ratings from at least two nationally recognized rating agencies, unless the total amount of the debt is less than \$75 million, in which case only one investment grade

rating is required for the senior debt obligations and one rating for the TIFIA debt obligations. The term rating agency is defined in Section 601(a)(14) and 49 CFR 80.3. If the TIFIA credit instrument is proposed as the senior debt, then it must receive the investment grade ratings.

To demonstrate the potential to achieve the above credit rating requirements, each project sponsor must provide a preliminary rating opinion letter from a rating agency that addresses the creditworthiness of the senior debt obligations funding the project and concludes that there is a reasonable probability for the senior debt obligations to receive an investment grade rating. The preliminary rating opinion letter should also provide an opinion on the default risk for the TIFIA instrument and must provide indicative ratings for both the senior debt obligations and the TIFIA credit instrument. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance. More detailed information about these TIFIA credit opinions and ratings may be found in the Program Guide on the TIFIA website at: <https://www.transportation.gov/tifia/program-guide>. As noted elsewhere in this notice of funding availability, the Program Guide is being updated in light of the FAST Act.

C. Other Requirements

Each project seeking TIFIA assistance must submit an application acceptable to the Secretary pursuant to the process set forth in this notice, and must satisfy applicable State and local transportation planning requirements. Each private applicant must receive public approval for its project as demonstrated by satisfaction of the applicable planning and programming requirements. Each project must have a dedicated revenue source to

repay the TIFIA loan. Projects receiving TIFIA credit assistance have been supported by a variety of revenue sources, including tolls, user fees, payments owing to the obligor under a public-private partnership (e.g., availability payments), and other dedicated revenue sources that also secure or fund the project obligations (including real estate tax increments, interjurisdictional funding agreements, and room and sales taxes).

The eligibility criteria also require a determination by the DOT that the project is creditworthy, which must be based on, at a minimum: (i) a rate covenant, if applicable, (ii) adequate coverage requirements to ensure repayment, and (iii) meeting the credit rating requirements set forth in Part VI below. The DOT will also utilize a report and recommendation from an independent financial advisor and any other information it needs to determine a project's creditworthiness.

Section 602(a) further requires that, for each project, TIFIA credit assistance must: (i) foster (if appropriate) partnerships that attract public and private investment for the project, (ii) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce lifecycle costs (including debt service costs) of the project, and (iii) reduce the contribution of Federal grant assistance for the project.

Each project must also demonstrate that the construction contracting process for the project can commence no more than 90 days after execution of a TIFIA credit instrument. In addition, TIFIA credit assistance cannot be obligated for a project until it receives a categorical exclusion, finding of no significant impact or record of decision, pursuant to the National Environmental Policy Act.

With respect to SIB applicants requesting a TIFIA loan to capitalize a rural projects fund, the DOT will conduct a creditworthiness and readiness evaluation that will

assess the institutional capacity and ability of the SIB to administer and disburse the requested TIFIA loan proceeds within the requisite time frame, as well as a creditworthiness review of the proposed repayment source for the TIFIA loan. The Program Guide on the TIFIA website will be updated to provide further guidance to SIB applicants.

VI. Application Process

The TIFIA application process begins with the submission of a Letter of Interest and determination of eligibility. Only after a project sponsor has submitted a Letter of Interest and met all statutory eligibility requirements will the project sponsor be invited to submit an application.

The DOT will conduct a rolling application process where project sponsors may submit Letters of Interest at any time. The DOT will permit project sponsors to apply once a favorable eligibility determination is made. An invitation to submit an application for credit assistance does not guarantee the DOT's approval, which will remain subject to evaluation, based on all of the TIFIA statutory evaluation criteria, and the successful negotiation of terms and conditions acceptable to the Secretary.

A. Letter of Interest

The Letter of Interest must (i) describe the project and the location, purpose, and cost of the project, (ii) outline the proposed financial plan, including the requested credit assistance and the proposed obligor, (iii) provide a status of environmental review, and (iv) provide information regarding satisfaction of other eligibility requirements of the TIFIA credit program. Letters of Interest must be submitted using the form on the TIFIA website: <https://www.transportation.gov/tifia/applications>. The DOT will be updating

this form to reflect changes made to the TIFIA program by the FAST Act. Pending publication of the updated form, project sponsors should continue to use the form posted on the TIFIA website.

The Letter of Interest form requires project sponsors to provide information demonstrating satisfaction (or expected satisfaction if permitted by TIFIA) of each of the eligibility requirements included in TIFIA. These eligibility requirements are outlined above in Part V and elsewhere in this notice.

As described in Part IV, the DOT may provide secured loans to finance up to 49 percent of reasonably anticipated eligible project costs, which is substantially more than the maximum of 33 percent that the DOT could provide prior to MAP-21. The Letter of Interest form requires a project sponsor requesting TIFIA credit assistance to provide a rationale for the amount of TIFIA credit assistance it is requesting, as a percentage of its reasonably anticipated eligible project costs. Similarly, the form requires a project sponsor to specify whether it has flexibility in its financial plan to finance the project with a reduced percentage of TIFIA credit assistance. In providing a rationale for the amount of credit assistance requested, a project sponsor can demonstrate that traditional sources of financing are not available at feasible rates without the TIFIA assistance, or that the costs of traditional financing options would constrain the sponsor's ability to deliver the project, or that delivery of the project through traditional financing approaches would constrain the sponsor's ability to deliver a group of related projects, or a full capital program. This information will help the DOT ensure that it allocates TIFIA's funding authority effectively.

A project sponsor must also describe the purpose of its project in the Letter of

Interest form, including the public purpose of the project. A project sponsor should provide quantitative or qualitative information about the public benefits that its project will achieve. Examples of public benefits include objectives specified in Section 101 and 49 U.S.C. 101(a) and 5301, other DOT grant or credit assistance programs, relevant Federal, State, or local transportation laws or plans, and other public benefits that can be achieved through transportation investments.

In the context of a public-private partnership, where multiple bidders may be competing for a concession such that the obligor has not yet been identified, the procuring agency may submit the project's Letter of Interest on behalf of the eventual obligor. The DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project.

The DOT will review each Letter of Interest submitted in accordance with this NOFA. The DOT may contact a project sponsor for clarification of specific information included in the Letter of Interest. The DOT will notify a project sponsor if the DOT determines that its project is not eligible or that the DOT will not be able to continue reviewing its Letter of Interest until certain eligibility concerns are addressed. If the DOT does not determine a project to be ineligible based on its initial review, the DOT will request additional information to supplement the Letter of Interest and complete its eligibility determination. This information may include, among other things, more detailed descriptions of the project, the project's readiness to proceed, the project's financial plan, including financial commitments to the project from sources other than TIFIA, and/or the applicant and its organizational structure.

B. Creditworthiness Review

Before completing its review of a Letter of Interest and rendering a determination of eligibility, the DOT will request that the project sponsor provide a preliminary rating opinion letter, as further described below, and the DOT will engage an independent financial advisor to prepare a report and recommendation acceptable in form and substance to the DOT. The DOT typically engages an independent legal advisor as part of the evaluation and negotiation of terms of TIFIA credit assistance for the project. There is no fee to submit a Letter of Interest; however, project sponsors will be required to reimburse the DOT for the costs of its outside financial and legal advisors. In order to enable the DOT to initially procure financial and legal advisors as part of the Letter of Interest review process, a project sponsor must submit \$250,000 to the DOT. This amount is due upon request by the DOT and must be submitted before the DOT hires outside advisors. These funds will be used, dollar for dollar, to cover the first \$250,000 in costs of the DOT's financial and legal advisors. In the event the DOT's advisors' fees are less than \$250,000, the excess will be returned to the project sponsor. If, due to the duration and complexity of the project, the DOT's advisors' fees exceed \$250,000, the DOT will invoice the project sponsor for fees in excess of \$250,000. Payment of such invoices will be required within 30 days after receipt.

1. Relief from Fees for Small Projects

For projects having eligible project costs that are reasonably anticipated to be \$75 million or less, the FAST Act provides for the reservation of not less than \$2 million of the TIFIA program's annual funding authority to be used in lieu of the third-party costs charged by the DOT. Project sponsors wishing to be considered for this available funding should indicate such in their Letters of Interest. For more details on this set-

aside, please see the Program Guide on the TIFIA website:
<https://www.transportation.gov/tifia/program-guide>.

C. Invitation to Apply

After concluding its review of the Letter of Interest and making a determination of eligibility, the DOT will inform the project sponsor of its determination. If a project is determined to be eligible, the DOT will inform the project sponsor that it may submit an application. If the DOT determines that a project is ineligible, it will notify the project sponsor of this determination and/or that the DOT will not be able to continue reviewing the Letter of Interest until certain eligibility concerns are addressed. The DOT will review Letters of Interest on a rolling basis and invite a project sponsor to apply once a favorable eligibility determination is made.

An invitation to apply for credit assistance does not guarantee the DOT's approval, which will remain subject to a project's continued eligibility, including creditworthiness, the successful negotiation of terms acceptable to the Secretary, and the availability of funds. In determining the availability of funds, the DOT may consider other projects seeking credit assistance through TIFIA.

By statute, the DOT works on a timeline for assessing applications for credit assistance. No later than 30 days after receipt of an application, the DOT will inform each applicant whether its application is complete or, if not complete, identify additional materials needed to complete the application. No later than 60 days after issuing such notice, the applicant will be notified whether the application is approved or disapproved.

D. Streamlined Application Process

The FAST Act requires that the DOT develop a streamlined application process

for certain projects within 180 days after enactment. The DOT is in the process of developing such a process. Once that process has been developed, it will be included in the Program Guide on the TIFIA website: <https://www.transportation.gov/tifia/program-guide>. The statutory criteria for the streamlined application process are set forth in Section 603(f). A key component of the streamlined application process will likely be a requirement that TIFIA credit assistance is provided on the DOT's standard terms as set forth in the loan agreement templates on the TIFIA website: <https://www.transportation.gov/tifia/tifia-loan-term-sheet-and-agreement>. Project sponsors should indicate in their Letters of Interest whether they are requesting the streamlined process and, if so, demonstrate how they meet the criteria.

As noted above, the project sponsor must submit \$250,000 to the DOT before the DOT hires financial and/or legal advisors as part of the Letter of Interest review process (subject to availability of the set-aside for small projects, as discussed above). This amount is due upon request by the DOT. Project sponsors will be invoiced for any costs in excess of \$250,000 incurred by the DOT from its outside financial and legal advisors (subject to availability of the \$2 million set-aside for small projects, as discussed above). More detailed information about these costs can be found in the TIFIA Program Guide, which is in the process of being updated to reflect the changes made by the FAST Act: <https://www.transportation.gov/tifia/program-guide>.

TIFIA borrowers should expect to track and report certain information with respect to each project's performance. The information may be used to assist the DOT in determining whether TIFIA is meeting the program's goals of leveraging Federal funds and encouraging private co-investment. The DOT may also use the information for

purposes of identifying and measuring performance with respect to goals, strategies, time frames, resources, and stakeholder involvement.

VII. Additional Guidance and Request for Comments

As noted in the Summary section, the DOT is publishing this notice to give project sponsors the opportunity to submit Letters of Interest for the newly authorized funding as soon as is practicable. However, in addition to authorizing funding for TIFIA credit assistance, the FAST Act made some significant changes to the TIFIA program's structure, including the terms and conditions pursuant to which the DOT can provide TIFIA credit assistance. This notice provides guidance about the TIFIA application process and how the DOT will implement some of the changes made by the FAST Act, but it does not provide comprehensive guidance about how the DOT will implement all of the changes made by the FAST Act.

This notice also does not include an exhaustive list of statutory and program requirements, such as the requirement that Federal funding recipients must comply with Title VI of the Civil Rights Act of 1964 and other nondiscrimination requirements. The Background section of this notice identifies the relevant laws that govern the TIFIA program. The FAST Act provides that the Secretary may promulgate such regulations as the Secretary determines to be appropriate to carry out the TIFIA program. The TIFIA regulations (49 CFR part 80), which provide specific guidance on the program requirements, were last updated in 2000. The DOT will continue to evaluate, based on stakeholder feedback and experience with implementation of new provisions contained in the FAST Act, whether future regulatory updates would be beneficial, and if so, what subject areas they would cover. The primary document that the TIFIA program uses to

provide ongoing program guidance is a “Program Guide” published on the TIFIA website. The DOT is updating the TIFIA Program Guide to reflect changes to the program under the FAST Act and will endeavor to address comments received in response to this request for comments. For additional guidance, applicants are encouraged to check the TIFIA program website regularly to obtain updated programmatic and application information. DOT staff are also available to provide technical assistance on a real-time basis.

Because of the significance of the changes made by the FAST Act to the TIFIA program, this notice invites interested parties to submit comments about that program’s implementation of the FAST Act and the DOT’s guidance for awarding TIFIA credit assistance. Interested parties can provide comments on any aspect of the DOT’s implementation of the TIFIA changes made by the FAST Act, including identifying specific topic areas where additional clarification or guidance would be beneficial to potential applicants. The DOT is particularly interested in comments from interested parties regarding the provisions in the FAST Act relating to rural projects fund capitalizations and SIBs. The DOT will consider these comments as it continues to implement the program and develop supplemental program guidance. The instructions for submitting comments are included below.

Comments should be sent to the DOT by April 11, 2016. Late-filed comments will be considered to the extent practicable.

Authority: 23 U.S.C. 601-610 (as set forth in the FAST Act); 49 CFR 1.48(b)(6); 23 CFR part 180; 49 CFR part 80; 49 CFR part 261; 49 CFR part 640.

Issued on: March 7, 2016.

Anthony R. Foxx,
Secretary.

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